

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**BLACK WARRIOR RIVERKEEPER,  
INC., and FRIENDS OF LOCUST  
FORK RIVER, INC.,**

**Plaintiffs,**

**vs.**

**METRO RECYCLING, INC.,**

**Defendant.**

**CASE NO.: 2:17-cv-01050-LSC**

**MOTION FOR JUDICIAL NOTICE OF ADEM RECORDS AS  
SUBMISSION IN SUPPORT OF MOTION TO DISMISS**

COMES NOW, Defendant, **METRO RECYCLING, INC.**, and moves this Honorable Court to take judicial notice of the attached materials as a submission in Support of Defendant's Motion to Dismiss. The attached documents which are listed below are copies of documents maintained on the Alabama Department of Environmental Management (ADEM) website ([app.adem.alabama.gov/efilings](http://app.adem.alabama.gov/efilings)) and reflect submissions and actions recorded by ADEM during the time frame December 1, 2015 to the present with respect to Metro Recycling Inc.'s landfill permit 05-05.

<u>Exhibit #</u>	<u>Document Description</u>	<u>Date</u>
1	ADEM Closure Inspection letter to Metro	07/10/17

2	Closure Certification letter from McGhee-Engineering Corp.	06/02/17
3	ADEM Inspection Report with Photos	11/29/16
4	ADEM Inspection Report with Photos	05/26/16
5	ADEM Inspection Report	12/01/15

Pursuant to the authorities discussed in the accompanying Memorandum, Defendant submits that the Court may take judicial notice of these documents without having to convert Defendant's Motion to Dismiss from a Rule 12(1)(6) Motion to a Motion for Summary Judgment pursuant to Rule 56, Fed.R.Civ.P.

Respectfully submitted,

/s/J. Allen Sydnor, Jr.

J. Allen Sydnor, Jr.  
Attorney for Defendant,  
Metro Recycling, Inc.

OF COUNSEL:

HUIE, FERNAMBUCQ & STEWART, LLP  
2801 Highway 280 South, Suite 200  
Birmingham, AL 35223-2484  
Fax: (205) 251-1256  
Phone: (205) 251-1193  
E-Mail: [asydnor@huielaw.com](mailto:asydnor@huielaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of July, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Eva L. Dillard, Esquire

E-mail: [edillard@blackwarriorriver.org](mailto:edillard@blackwarriorriver.org)

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM-ECF participants:

None.

*s/J. Allen Sydnor, Jr.*

OF COUNSEL

**EXHIBIT “1”**

**LANCE R. LEFLEUR**  
DIRECTOR



**KAY IVEY**  
GOVERNOR

**Alabama Department of Environmental Management**  
[adem.alabama.gov](http://adem.alabama.gov)

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

July 10, 2017

Mr. Scott Tidwell  
Metro Recycling, Inc.  
P.O. Box 1839  
Pinson, Alabama 35126

RE: Closure Inspection  
Metro Recycling, Inc. Landfill  
Permit Number 05-05

Dear Mr. Tidwell:

On July 6, 2017, Mr. Devin Jenkins of the Solid Waste Branch conducted a closure inspection of the Metro Recycling, Inc. Landfill. Based on the visual inspection of the referenced landfill and the engineer certification, the Department has determined that the closure is in compliance with the approved plans and ADEM Division 335-13 Regulations. Before the landfill can be considered properly closed, all documentation and applicable fees, as required by ADEM Division 335-5 Uniform Environmental Covenants Program, must be submitted to the Department.

It is noted that once the landfill is considered properly closed, all post closure requirements must be met according to ADEM Division 335-13-4-.20(3). This includes, but is not limited to filling areas which provide for ponding of surface water, correcting landfilled areas with extensive surface cracks in the soil cover, maintaining access control structures and signs and maintaining the run-off control system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

If you should have any questions regarding this matter, please contact Devin Jenkins of the Solid Waste Branch at (334) 270-5605.

Sincerely,

S. Scott Story, Chief  
Solid Waste Engineering Section  
Land Division

SSS/dmj

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

**EXHIBIT “2”**



June 2, 2017

**Alabama Department of Environmental Management**

*ATTN: Mr. Scott Story, Chief*  
Solid Waste Engineering Section  
1400 Coliseum Boulevard  
Montgomery, AL 36110-2059

**RE: Metro Recycling, Inc.**  
Tire Landfill, Permit No. 05-05

Dear Mr. Story:

This letter is to certify that Metro Recycling, Inc. Tire Landfill has been graded, covered with soil material and ditched as shown on the attached drawing and photographs. Revegetation was completed in January 2016 with repairs as recent as May 2017.

Based on my final inspection on June 2<sup>nd</sup>, 2017, I hereby certify the landfill has been closed (as shown on the attached drawings and photographs) to the best of my knowledge, information and belief based on inspections by myself and/or other qualified persons employed by McGehee Engineering Corp.

If you should have any questions or need additional information, please do not hesitate to contact our office.

Sincerely,

**McGehee Engineering Corp.**

A handwritten signature in blue ink that reads "Jeff Aldridge".

Jeff Aldridge, P.E.  
Alabama Reg. No. 33959





VICINITY MAP



SCALE: 1" = 2 MILES

### MAP LEGEND

- EXISTING CONTOURS (MAJOR)
- EXISTING CONTOURS (MINOR)
- BORING SITE WITH I.D. & DEPTH OF BORING
- PERMITTED FACILITY BOUNDARY
- DRAINAGE COURSE
- SPOT ELEVATION
- RIP RAP LINED DITCH OR DOWNDRAIN
- BENCH/DIVERSION

#### SEDIMENT BASIN 001

SEDIMENT REMOVAL ELEV.: 523.0'  
 EMERGENCY SPILLWAY ELEV.: AS SHOWN  
 TOP OF DAM ELEV.: AS SHOWN  
 EMERGENCY SPILLWAY: CONCRETE LINED  
 DESIGN SEDIMENT STORAGE: ..... 2.64 ACFT.  
 DESIGN DETENTION STORAGE: ..... 1.76 ACFT.  
 PERMANENT POOL CAPACITY: ..... 4.40 ACFT.  
 \*EXISTING DETENTION STORAGE: ..... 2.60 ACFT.  
 \*EXISTING SEDIMENT STORED: ..... 1.80 ACFT.  
 \*BASED ON 10-23-2015 BASIN SOUNDING (SURVEY)

EXISTING NORMAL POOL AREA  
 EXISTING DRAINAGE COURSE

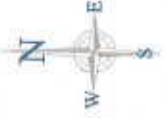
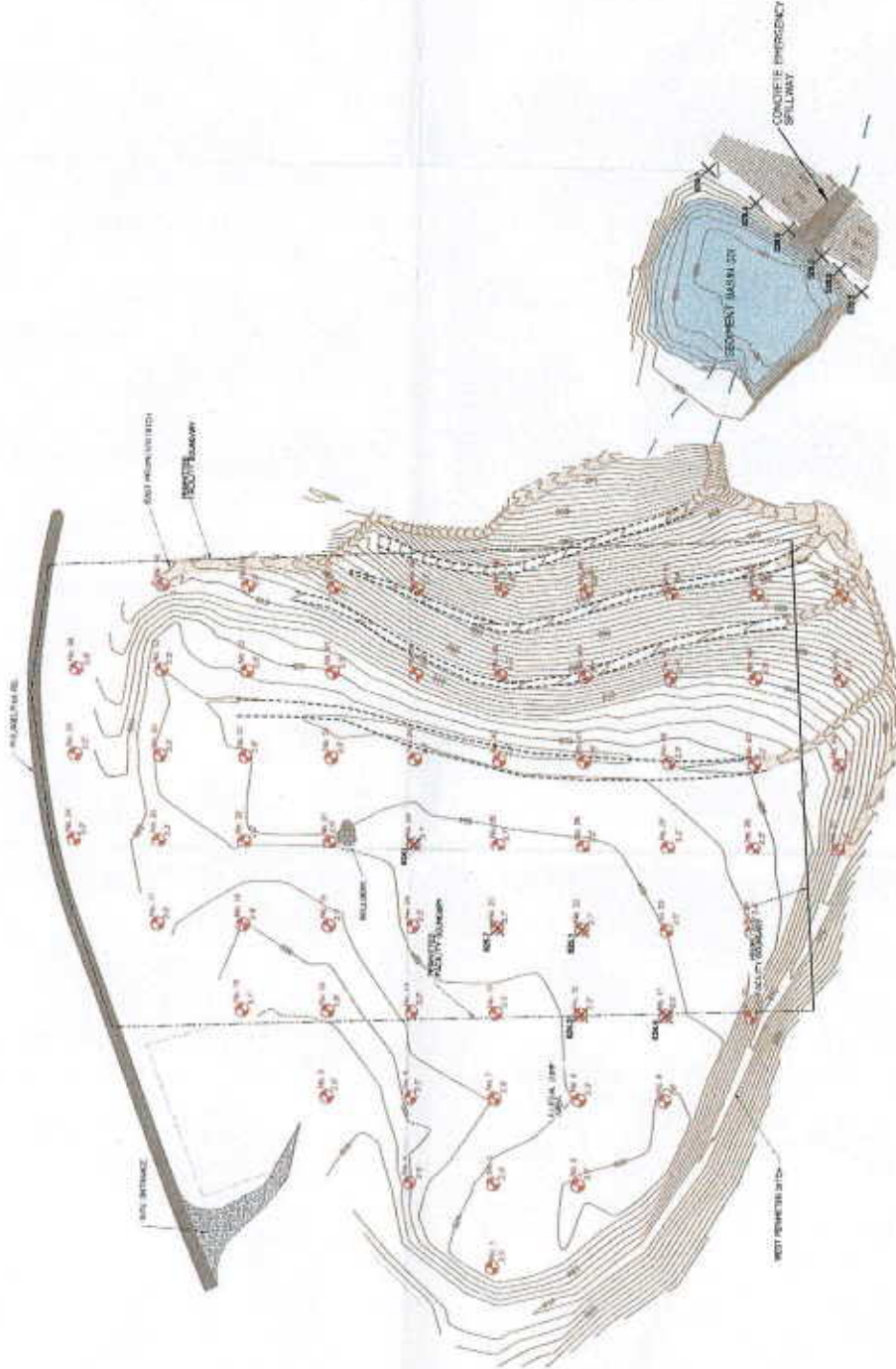
CONTOUR INTERVAL: AS SHOWN  
 SECTION 30 & 31, TOWNSHIP 13 SOUTH, RANGE 1 WEST  
 ALL IN BLOUNT COUNTY, ALABAMA  
 BASE MAP: FIELD SURVEY

**METRO**  
**RECYCLING, INC.**

TIRE LANDFILL  
 PERMIT NO. 05-05

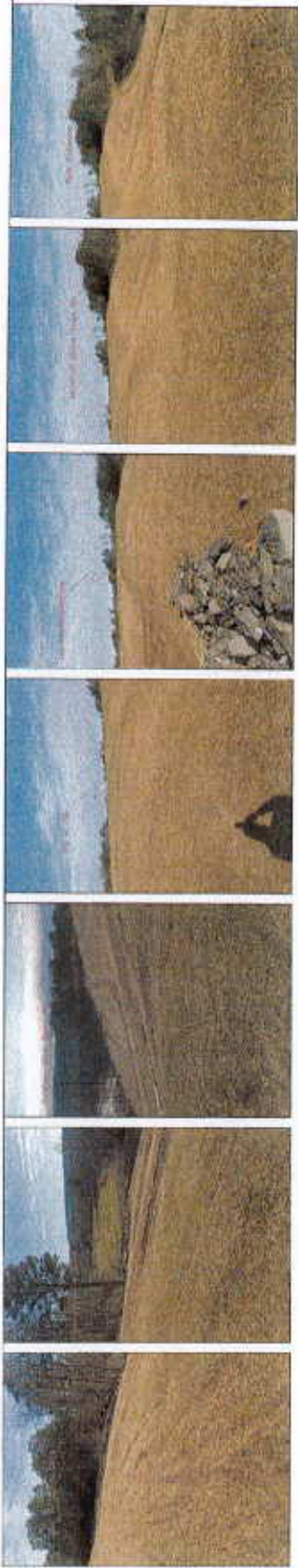
CLOSURE FINAL GRADE

FILE	SCALE	SHEET NO.
APPROVED BY	DATE	08-02-17
J.D.A.		1 of 1



**MEC**  
**mcgehee engineering corp**  
 post office box 3431  
 prairieville, mississippi 39057-3431  
 telephone: (205) 221-0686 fax: 221-7721  
 email: staff@mcgehee.org





TIRE LANDFILL PERMIT NO. 05-06  
FINAL GRADING PHOTOS TAKEN 05-15-16  
NO SCALE

METRO RECYCLING, INC.		TIRE LANDFILL PERMIT NO. 05-06		CLOSE-UP PHOTOS OF THE AS-BUILT FINAL GRADE	
DATE	05/15/16	SCALE	1" = 100'	PROJECT NO.	17-001
PROJECT	TIAA	DATE	05/25/16	BY	J.M.F.

**EXHIBIT “3”**

Variances: N/A

Regulation Cited	Yes	No
<b><u>General Operational Requirements for All Landfills</u></b>		
1.) 13-4-.15(2) Alternative daily cover approved or used	N/A	
2.) 13-4-.16(2)(c)4. Explosive gas monitoring points located as required	"	
3.) 13-4-.17(1) Run-on system constructed and maintained	X	
4.) 13-4-.17(2) Run-off system constructed and maintained (Ex: ponds, basins, silt fences)	X	
5.) 13-4-.17(3) On-site drainage structures constructed and maintained (Ex: ditches, berms)	X	
6.) 13-4-.19 Access control measures adequate	X	
7.) 13-4-.21(1)(a) Operation as stipulated in the permit (Ex. Disposal cell certified by P.E.)	N/A	
8.) 13-4-.21(1)(b) Only approved waste streams accepted	"	
9.) 13-4-.21(1)(b)1 Random inspection of incoming loads	"	
10.) 13-4-.21(1)(c) Waste certification conducted on industrial/medical waste prior to disposal	"	
11.) 13-4-.21(1)(c)5. Waste certifications on file in operating record for review	"	
12.) 13-4-.21(1)(d) No unauthorized discharge or water pollution	X	
13.) 13-4-.21(1)(e) Facility boundary adequately marked and observable	N/A	
14.) 13-4-.21(1)(f) Measuring or weighing devices operable (method: _____)	"	
15.) 13-4-.21(2)(a) No open burning unless approved by Department	X	
16.) 13-4-.29(1) Records maintained as required; operating record available for review	N/A	
17.) 13-12-.01(3) Certified Landfill Operator	"	

**Solid Waste Landfill Inspection Observations**

This facility is not receiving waste for disposal and is currently in closure. Waste is adequately covered and now dormant grass is established site-wide. Drainage devices and the stormwater pond appear to be functioning properly.



This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

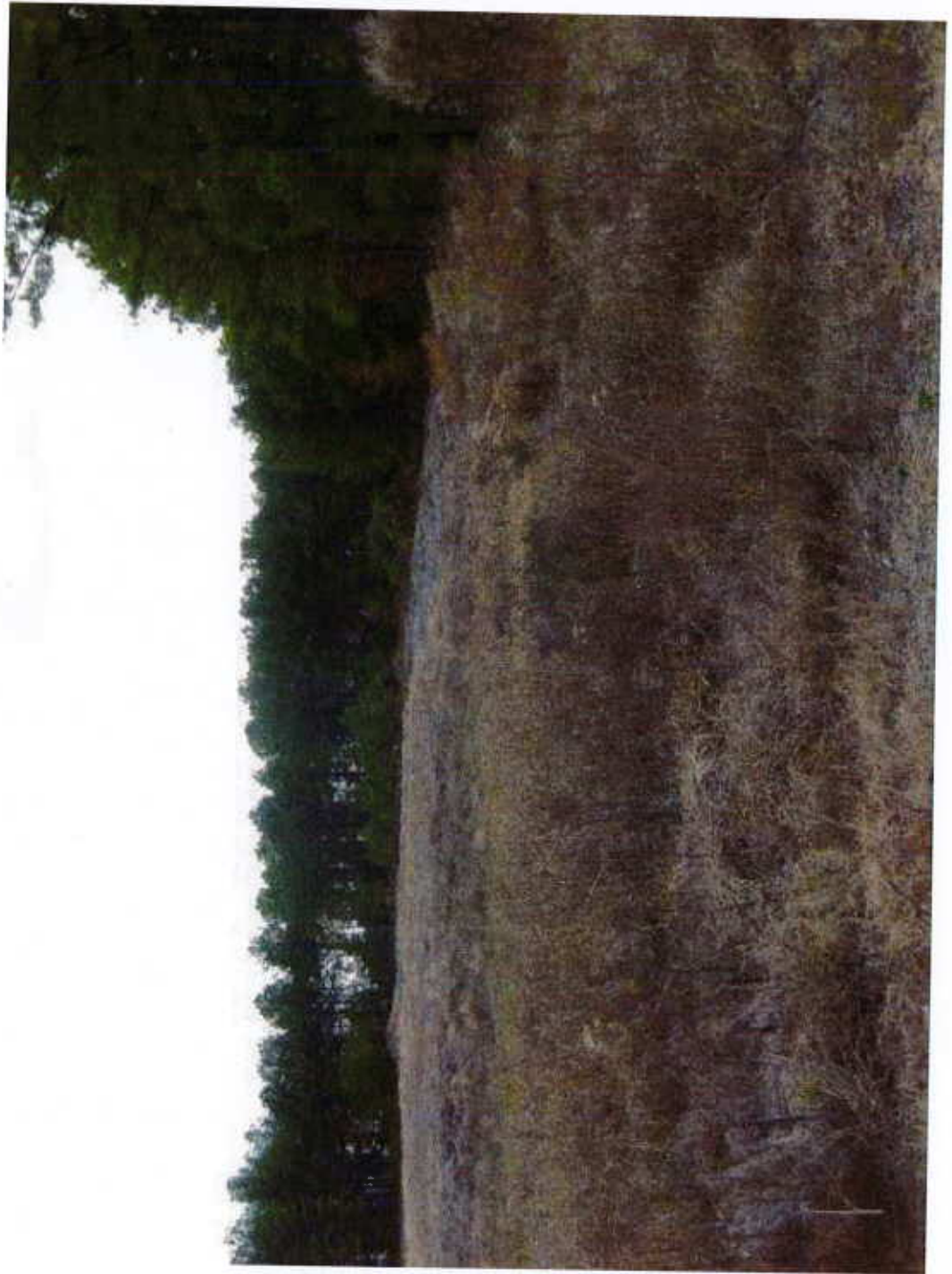
Yes	No
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### C/DLF and ILF Requirements

36.)	13-4-.23(1)(a)1.	All waste covered weekly with 6 in. soil or alternative cover (type: _____)	N/A
37.)	13-4-.23(1)(b)	All waste spread in <2 ft. thick layers; thoroughly compacted	"
38.)	13-4-.23(1)(c)	Waste confined to small area; on appropriate slope (<4:1)	"
39.)	13-4-.23(1)(e)	Site security adequate	X
40.)	13-4-.23(1)(f)	Proper sign located at entrance	N/A
41.)	13-4-.23(1)(h)	Adequate personnel provided	"
42.)	13-4-.23(1)(i)	Adequate equipment provided	"
43.)	13-4-.23(1)(k)	Large empty containers > 10 gal. rendered unsuitable for holding liquids	"
44.)	13-4-.23(2)(a)	Scavenging prohibited and salvaging controlled	"
45.)	13-4-.23(2)(b)	Litter controlled	"
46.)	13-4-.23(2)(c)	Completed areas properly closed	X
47.)	13-4-.23(2)(d)	All-weather access road to operating face of landfill	N/A
48.)	13-4-.23(2)(e)	Monitoring/treatment structures protected and maintained in good repair	"
49.)	13-4-.23(2)(f)	Records maintained on daily volumes; operating record available for review	"
50.)	13-4-.23(2)(g)	Vector control measures adequate	"

### Solid Waste Landfill Inspection Observations





11/29/2016

05-05



11/29/2016

05-05



11/29/2016

05-05





11/29/2016

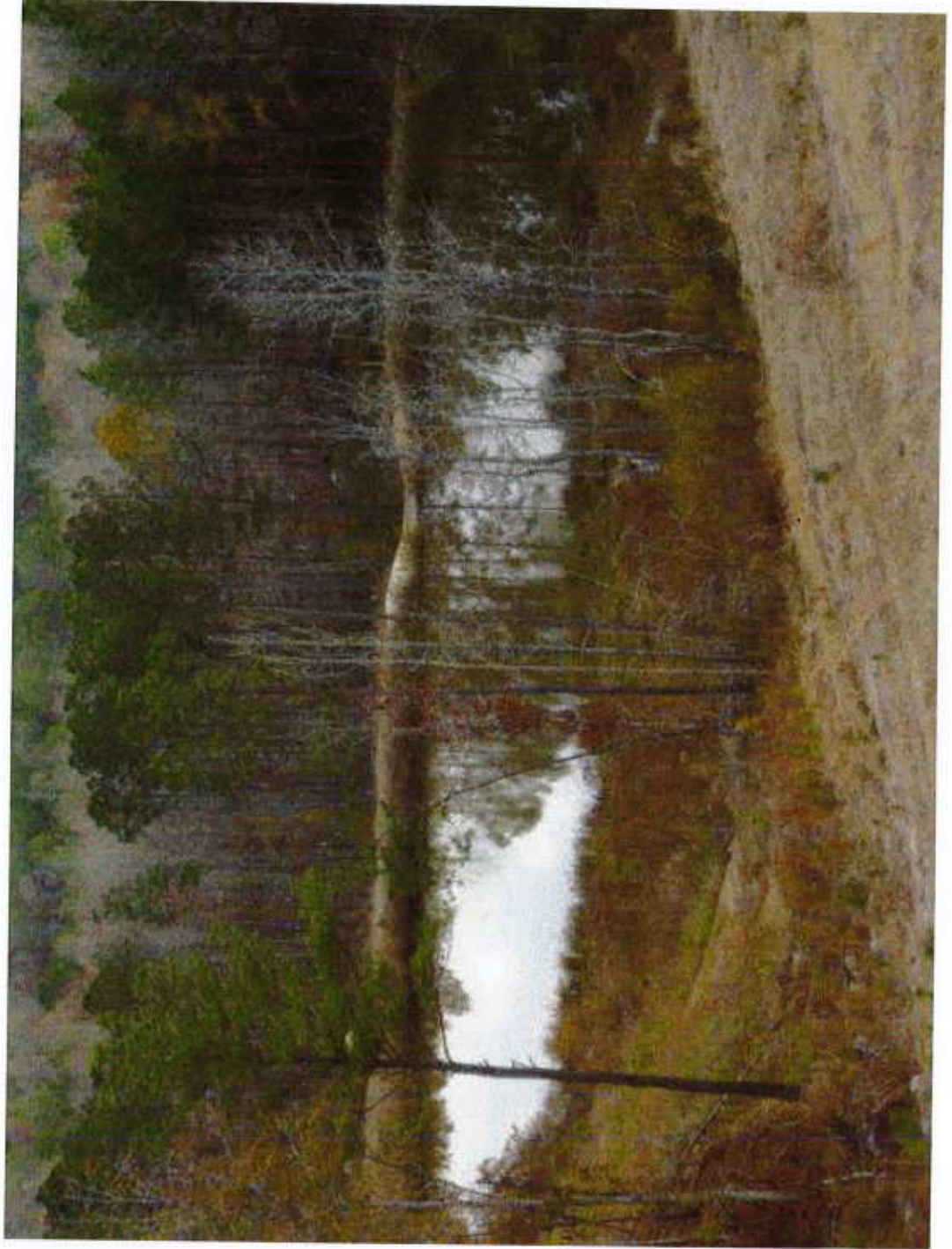
05-05



11/29/2016

05-05





11/29/2016

05-05

6





11/29/2016

05-05

**EXHIBIT “4”**

Variances:  $N/A$

**Yes**      **No**

1.)	13-4-.15(2)	Alternative daily cover approved or used	N/A
2.)	13-4-.16(2)(c)4.	Explosive gas monitoring points located as required	"
3.)	13-4-.17(1)	Run-on system constructed and maintained	X
4.)	13-4-.17(2)	Run-off system constructed and maintained (Ex: ponds, basins, silt fences)	X
5.)	13-4-.17(3)	On-site drainage structures constructed and maintained (Ex: ditches, berms)	X
6.)	13-4-.19	Access control measures adequate	X
7.)	13-4-.21(1)(a)	Operation as stipulated in the permit (Ex. Disposal cell certified by P.E.)	N/A
8.)	13-4-.21(1)(b)	Only approved waste streams accepted	"
9.)	13-4-.21(1)(b)1	Random inspection of incoming loads	"
10.)	13-4-.21(1)(c)	Waste certification conducted on industrial/medical waste prior to disposal	"
11.)	13-4-.21(1)(c)5.	Waste certifications on file in operating record for review	"
12.)	13-4-.21(1)(d)	No unauthorized discharge or water pollution	X
13.)	13-4-.21(1)(e)	Facility boundary adequately marked and observable	N/A
14.)	13-4-.21(1)(f)	Measuring or weighing devices operable (method: _____)	"
15.)	13-4-.21(2)(a)	No open burning unless approved by Department	X
16.)	13-4-.29(1)	Records maintained as required; operating record available for review	N/A
17.)	13-12-.01(3)	Certified Landfill Operator	"

### Solid Waste Landfill Inspection Observations

**No**

- 18.) 13-4-.22(1)(a)1. All waste covered daily with 6 in. soil or alternative cover (type: \_\_\_\_\_)
- 19.) 13-4-.22(1)(b) Waste confined to small area, <2 ft. thick layers; on appropriate slope (<4:1)
- 20.) 13-4-.22(1)(c) All waste thoroughly compacted
- 21.) 13-4-.22(1)(e) Adequate personnel provided
- 22.) 13-4-.22(1)(f) Adequate equipment provided
- 23.) 13-4-.22(1)(g) Adverse weather provisions provided
- 24.) 13-4-.22(1)(h) Site security adequate
- 25.) 13-4-.22(1)(i) Proper sign located at entrance
- 26.) 13-4-.22(1)(j) Special provisions for large dead animals
- 27.) 13-4-.22(1)(l) Large empty containers rendered unsuitable for holding liquids
- 28.) 13-4-.22(2)(a) Scavenging prohibited and salvaging controlled
- 29.) 13-4-.22(2)(b) Litter controlled
- 30.) 13-4-.22(2)(c) All-weather access road to operating face of landfill
- 31.) 13-4-.22(2)(d) Vector control measures adequate
- 33.) 13-4-.22(2)(e) Monitoring/treatment structures protected and maintained in good repair
- 34.) 13-4-.22(2)(f) Completed areas properly closed
- 35.) 13-4-.22(2)(g) Records maintained on daily volumes; operating record available for review

M/A

## This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



Regulation  
Cited

Yes No

C/DLF and ILF Requirements

36.)	13-4-.23(1)(a)1.	All waste covered weekly with 6 in. soil or alternative cover (type: _____)	N/A	
37.)	13-4-.23(1)(b)	All waste spread in <2 ft. thick layers; thoroughly compacted	"	
38.)	13-4-.23(1)(c)	Waste confined to small area; on appropriate slope (<4:1)	"	
39.)	13-4-.23(1)(e)	Site security adequate	X	
40.)	13-4-.23(1)(f)	Proper sign located at entrance	N/A	
41.)	13-4-.23(1)(h)	Adequate personnel provided	"	
42.)	13-4-.23(1)(i)	Adequate equipment provided	"	
43.)	13-4-.23(1)(k)	Large empty containers > 10 gal. rendered unsuitable for holding liquids	"	
44.)	13-4-.23(2)(a)	Scavenging prohibited and salvaging controlled	X	
45.)	13-4-.23(2)(b)	Litter controlled	X	
46.)	13-4-.23(2)(c)	Completed areas properly closed	X	
47.)	13-4-.23(2)(d)	All-weather access road to operating face of landfill	N/A	
48.)	13-4-.23(2)(e)	Monitoring/treatment structures protected and maintained in good repair	"	
49.)	13-4-.23(2)(f)	Records maintained on daily volumes; operating record available for review	"	
50.)	13-4-.23(2)(g)	Vector control measures adequate	"	

Solid Waste Landfill Inspection Observations

Reclamation with well-established and mature grass has been achieved site-wide. All waste was properly covered. Earthen berms and rip-rap drainage areas appeared to be functioning properly. The on-site stormwater pond also appeared to be functioning as designed.



# Gated access



5/26/2016

05-05

1



# Perimeter drainage



5/26/2016

05-05



# Top of the filled area



5/26/2016

05-05

3



# Top of the filled area



5/26/2016

05-05



# Stormwater pond



5/26/2016

05-05

5



# Outside slope



5/26/2016

05-05

6



# Outside slope



5/26/2016

05-05

7

**EXHIBIT “5”**

Facility Name: Metro Recycling Inc Landfill

Variances: N/A

Regulation Cited		Yes	No
<b><u>General Operational Requirements for All Landfills</u></b>			
1.)	13-4-.15(2) Alternative daily cover approved or used	<u>N/A</u>	
2.)	13-4-.16(2)(c)4. Explosive gas monitoring points located as required	<u>"</u>	
3.)	13-4-.17(1) Run-on system constructed and maintained	<u>X</u>	
4.)	13-4-.17(2) Run-off system constructed and maintained (Ex: ponds, basins, silt fences)	<u>X</u>	
5.)	13-4-.17(3) On-site drainage structures constructed and maintained (Ex: ditches, berms)	<u>X</u>	
6.)	13-4-.19 Access control measures adequate		<u>X</u>
7.)	13-4-.21(1)(a) Operation as stipulated in the permit (Ex. Disposal cell certified by P.E.)	<u>N/A</u>	
8.)	13-4-.21(1)(b) Only approved waste streams accepted	<u>"</u>	
9.)	13-4-.21(1)(b)1 Random inspection of incoming loads	<u>"</u>	
10.)	13-4-.21(1)(c) Waste certification conducted on industrial/medical waste prior to disposal	<u>"</u>	
11.)	13-4-.21(1)(c)5. Waste certifications on file in operating record for review	<u>"</u>	
12.)	13-4-.21(1)(d) No unauthorized discharge or water pollution	<u>X</u>	
13.)	13-4-.21(1)(e) Facility boundary adequately marked and observable	<u>X</u>	
14.)	13-4-.21(1)(f) Measuring or weighing devices operable (method: _____)	<u>N/A</u>	
15.)	13-4-.21(2)(a) No open burning unless approved by Department	<u>X</u>	
16.)	13-4-.29(1) Records maintained as required; operating record available for review	<u>N/A</u>	
17.)	13-12-.01(3) Certified Landfill Operator	<u>"</u>	

**Solid Waste Landfill Inspection Observations**

6. Dumping of approximately 20 cubic yards of C/D waste and rubbish was noted on the southern portion of the site adjacent to the rip-rap drainage ditch leading to the stormwater pond.



This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



Regulation  
Cited

Yes

No

C/DLF and ILF Requirements

36.)	13-4-.23(1)(a)1.	All waste covered weekly with 6 in. soil or alternative cover (type: _____)	N/A	
37.)	13-4-.23(1)(b)	All waste spread in <2 ft. thick layers; thoroughly compacted	"	
38.)	13-4-.23(1)(c)	Waste confined to small area; on appropriate slope (<4:1)	"	
39.)	13-4-.23(1)(e)	Site security adequate	X	
40.)	13-4-.23(1)(f)	Proper sign located at entrance	N/A	
41.)	13-4-.23(1)(h)	Adequate personnel provided	"	
42.)	13-4-.23(1)(i)	Adequate equipment provided	"	
43.)	13-4-.23(1)(k)	Large empty containers > 10 gal. rendered unsuitable for holding liquids	"	
44.)	13-4-.23(2)(a)	Scavenging prohibited and salvaging controlled	X	
45.)	13-4-.23(2)(b)	Litter controlled	X	
46.)	13-4-.23(2)(c)	Completed areas properly closed	X	
47.)	13-4-.23(2)(d)	All-weather access road to operating face of landfill	N/A	
48.)	13-4-.23(2)(e)	Monitoring/treatment structures protected and maintained in good repair	"	
49.)	13-4-.23(2)(f)	Records maintained on daily volumes; operating record available for review	"	
50.)	13-4-.23(2)(g)	Vector control measures adequate	X	

Solid Waste Landfill Inspection Observations

- This landfill is not operational with respect to receiving waste for disposal. The recent activity on-site is related to continuing closure and includes rip-rap installation, final grading, and straw and grass seed application. Test pits associated with adequate cover layer certification were noted.
- No personnel were on-site at the time of the inspection. Equipment used in closure activities remained on-site.

# Equipment used in closure activities



12/1/2015

05-05

# Perimeter drainage



12/1/2015

05-05



# Top of the fill area

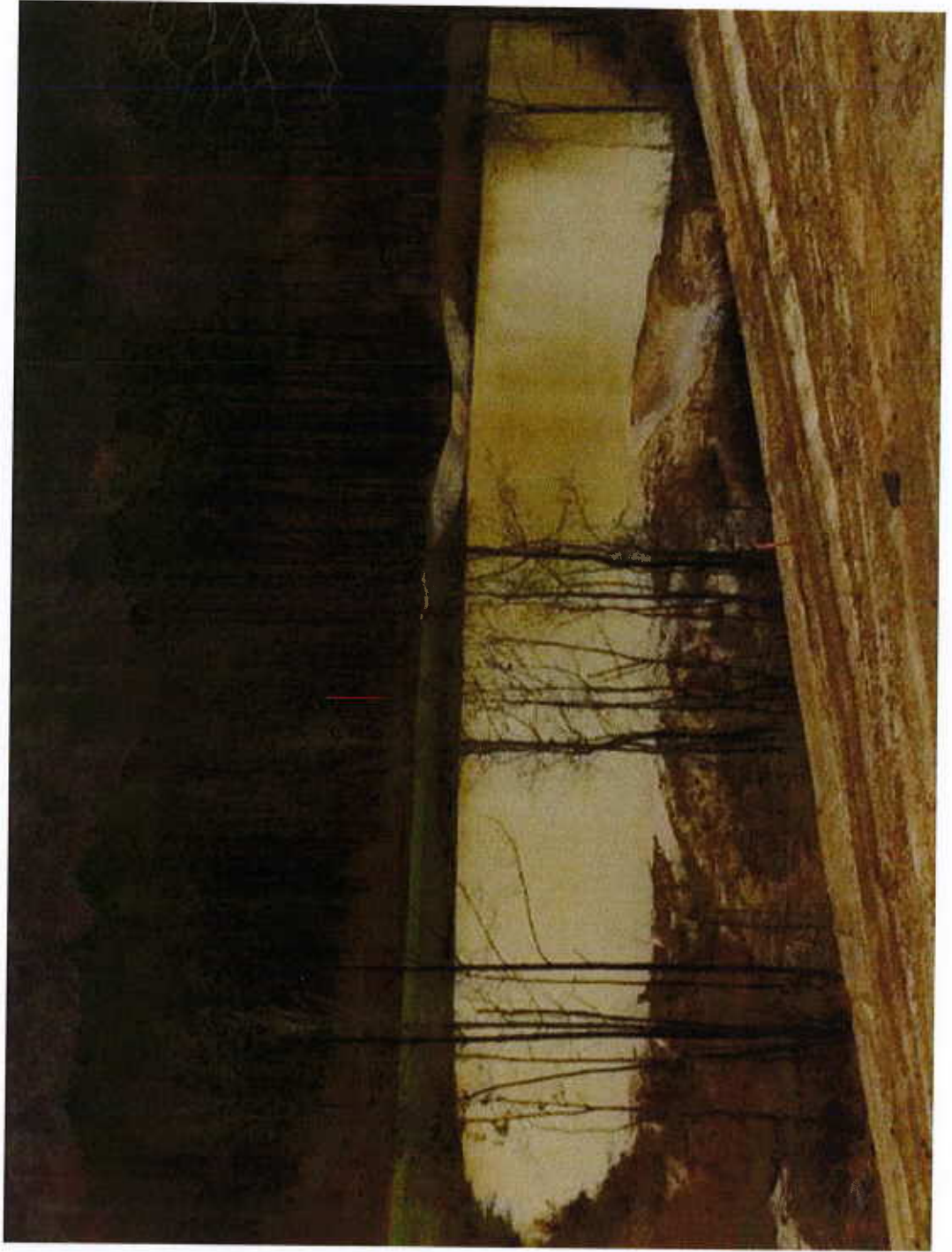


12/1/2015

05-05



# Stormwater pond



12/1/2015

05-05

# Major outside slope



12/1/2015

05-05

5



# Major outside slope



12/1/2015

05-05

# Dumping



12/1/2015

05-05



# Dumping



12/1/2015

05-05

# Test pit



05-05

12/1/2015